

STRATEGIC FORUM

National Defense University

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Key Points

- ◆ Syrian political and community leaders are already planning for postconflict "transitional justice." *Transitional justice* refers to the wish to hold perpetrators of atrocities accountable by means of some formal process that helps instill or rebuild the rule of law that replaces a former government perceived as unjust.
- ◆ No single model for transitional justice exists; in the course of confronting, overcoming, and recovering from serious domestic upheaval and conflict, a substantial number of countries have employed various means to achieve transitional justice.
- ◆ Syria can help itself by quickly choosing a model for transitional justice that is consistent with its national culture and that meets the standards expected of such efforts with respect to due process and transparency. Such an effort may facilitate national healing and reconstruction and allow warring parties to find common ground. If delayed, transitional justice may be irreparably supplanted by the wholly destructive desire for private or communal vengeance.

Transitional Justice for Syria

by Nicholas Rostow

Transitional justice is the provision of justice in the transition from one form of government, often perceived as illegitimate, unjust, and tyrannical, or an anarchic society, to one that observes the rule of law and administers justice. It also is about choices: how to allocate scarce prosecutorial, judicial, police, and prison resources. The goal is to make the rule of law ordinary. A 2004 report of the United Nations (UN) Secretary-General on the rule of law and transitional justice in conflict and postconflict societies observed that most examples of transitional justice involved states emerging from civil war or widespread civil unrest such that government became impossible:

Our experience in the past decade has demonstrated clearly that the consolidation of peace in the immediate post-conflict period, as well as the maintenance of peace in the long term, cannot be achieved unless the population is confident that redress for grievances can be obtained through legitimate structures for the peaceful settlement of disputes and the fair administration of justice.¹

Syria after President Bashar al-Assad may pose uniquely Syrian challenges and solutions, but it will hardly be alone in having to undergo transition from dictatorship and civil war to something else. The process inevitably involves transitional justice in some form.

Transitional justice can encompass everything from highly formalized—some might say ritualized—administration of justice, establishment of accountability, and social reconstruction to nothing at all. It may involve external assistance or imposed institutions. The modern history of transitional justice includes the exile of Napoleon to St. Helena, the imprisonment of Jefferson Davis, and the post-World War II trials of German and Japanese war criminals as well as the role played today by international, national, and mixed national-international tribunals; truth commissions; general, partial, and conditional amnesties; and other devices in the process of rebuilding a society traumatized by war. South

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Africa, Sierra Leone, Guatemala, Rwanda, and Cambodia provide examples of the wide variety of efforts undertaken under the general rubric of “transitional justice.”

This transitional justice smorgasbord offers an almost infinite choice among postconflict or postdictatorship mechanisms. The point is to tailor the approach to the society in question with the goal of establishing or reestablishing the rule of law.² It is “transitional” because the task is to address past wrongs of the most serious kind, not ongoing issues of justice and public order. Efforts to establish institutions that are capable of delivering transitional justice also should become instruments of law enforcement and judicial administration in the future; thus, the transitional effort may help provide a firm foundation for the rule of law. This transformation does not always happen.

The variety of approaches reflects what Montesquieu called the “nature of things”: an international system consisting of diverse independent states of varied political and civil cultures with equally diverse mores and perspectives.³ Experts such as the African Union’s Panel of the Wise, who have studied the issue of transitional justice, recognize that tension may exist between the need for political peace through transitional, all-party governments and the desire for accountability for atrocities.⁴ Therefore, the experts suggest following where the local people lead because that population has to be comfortable with the balance reached. The subsequent pages examine this tension and ways to relax it in the course of analyzing the nature of transitional justice, ingredients necessary for success, and bases for assessing success.

Issues

Contemporary notions of transitional justice and the need for mechanisms to deliver it emerged from World War II. The Nuremberg and Tokyo war crimes trials and their successors—the International Criminal Court for the Former Yugoslavia, the International Criminal Court for Rwanda, the Sierra Leone Special Court, the Special Tribunal for Cambodia, and, of course, the International

Criminal Court—elevated accountability for atrocities to the status of lodestars for much more than a judicial settling of accounts. They have become standard evocations in efforts to build new societies after periods of violence and dictatorship and help make transitional justice a theme in efforts to address postconflict issues. National atrocity trials and appeals for the creation of a permanent international criminal court relied on the examples of Nuremberg and Tokyo as well.

Since the end of the Cold War, consideration of transitional justice has drawn systematic study and advocacy. Transitional justice is on the agenda of the United Nations and other international organizations, nongovernmental organizations, and a substantial number of countries emerging from civil conflict and/or addressing postdictatorship issues. At the same time, it is significant that the demise of the Soviet Union, probably the most important international event since 1945, was not followed by a system of transitional justice. The Russian example underscores the importance of local wishes, traditions, and power structures in this matter. Syria, which also is a cauldron of conflicting interests, is not going to provide an easy environment for consensus-building on transitional justice or any other subject.

In September 2003, prompted by an interest in transitional justice and the rule of law, the establishment of the International Criminal Court in 2002, and the debate following the U.S. invasion of Iraq in 2003, the UN Security Council under the British presidency debated “Justice and the Rule of Law.”⁵ Kofi Annan, then Secretary-General, noted that “the rule of law is not a luxury and justice is not a side issue.” People, he said, “lose faith in a peace process when they do not feel safe from crime, or secure in returning to their homes, or able to start rebuilding the elements of a normal life, or confident that the injustices of the past will be addressed.” Annan emphasized that “without credible machinery to enforce the law and resolve disputes, people resort to violent or illegal means. And we have seen that elections held when the rule of law is too fragile seldom lead to lasting democratic governance.”⁶

Annan acknowledged that the task is politically delicate as well as technically difficult, involving such sensitive issues as sovereignty, tradition and security, and justice and reconciliation. It requires creation of a national agenda, political leadership, and determination to implement that agenda, and a constituency to support the process. He warned that a “one-size-fits-all approach does not work. Local actors must be involved from the start.” The process may take many years, and it must not come at the expense of the more immediate need to establish the rule of law on the ground. Annan noted that “[e]ach society needs to strike the right balance between the goals of justice and reconciliation” but stressed that international standards must be observed:

There should be no amnesties for war crimes, genocide, crimes against humanity or other serious violations of international human rights and international humanitarian law. The rights of the accused should be scrupulously respected. . . At times, we may need to accept something less than full or perfect justice or to devise intermediate solutions such as truth and reconciliation commissions. We may need to put off the day when the guilty are brought to trial. At other times, we may need to accept, in the short-term, a degree of risk to peace in the hope that in the long-term peace will be more securely guaranteed.⁷

A war-torn or otherwise traumatized country will have a lengthy reconstruction priority list. Among the items will be peace, stability, security, and justice. Outsiders may have claims with respect to postconflict institutions depending on the extent and nature of their assistance. Insistence on the rule of law and transitional justice likely will figure among them. Whatever the claims, one should recognize that all interested parties, whether indigenous or external, will have their own perspective and interests. The UN Secretariat, for example, takes the view that “Justice, peace, and democracy are not mutually exclusive but rather mutually reinforcing imperatives.”⁸ On the other hand, the Secretariat has refused or hesitated to engage in transitional justice assistance when the new government refuses to give up the

death penalty.⁹ Thus, the Secretariat brings its own perspective and concerns to each situation that might involve transitional justice, which it will want to see realized in the event that UN assets are involved in a national reconstruction.

Recent history gives a sense of the complex environment in which advocates of particular kinds of transitional justice must operate. Spain, for example, did not engage in the kind of transitional justice exercises seen in South Africa when it moved from Franco’s regime to constitutional monarchy and democracy. Much of Central and Eastern Europe emerged from the Soviet Union to establish democracies and join the European Union and North Atlantic Treaty Organization, also without engaging in a process or much of a process of transitional justice. The same is of course true of Russia, although one may wonder if it has achieved either peace or democracy in the years since the demise of the Communist regime. No UN body has called for a different approach in these regions. The Secretariat and Secretary-General have adopted a perspective that does not take into account all recent experience, much less earlier historical experiments such as reconstruction in the American South after the Civil War. The UN statement about the mutually reinforcing imperatives of peace, justice, and democracy does not brook criticism and has become conventional wisdom. That it is a laudable goal is not the issue, at least to this writer.

Annan emphasized that the most important questions of governance and transitional justice must be considered at the beginning and not at the middle or end of a transitional justice process. Do the local inhabitants want institutionalized transitional justice? Would they rather let the winner govern and go back to their lives undisturbed by trials, truth commissions, or other mechanisms for documenting what happened and holding perpetrators responsible? What do the local inhabitants think is more important: security or peace? Justice or democracy? The rule of law or reconciliation? What is most comfortable given local culture and social mores? And how can outside actors—governments, international organizations, or non-governmental organizations or some combination—assist in the construction of a postconflict or post-trauma society

in line with the wishes of the inhabitants? If local desires and aspirations are ignored, the task of reconstruction or construction and transitional justice becomes enormously more difficult. If outsiders are ignored entirely, vigilantism or worse may result. These points have become staples of the literature on transitional justice.¹⁰

In addition, the Secretary-General stated that international standards with respect to transitional justice existed and had to be followed. Yet even with respect to genocide, which surely is a crime under customary international law, by the end of 2012 only 142 states were parties to the Convention on the Prevention and Punishment of the Crime of Genocide. States have become parties to the International Convention on Civil and Political Rights, but it is not universally applicable, nor is it incontrovertibly representative of customary international law. Indeed, the Convention on Civil and Political Rights only binds the parties, and then only to the extent of declarations and reservations. China, for example, is not a party, which thus excludes a seventh of the world's population from the Convention's reach.

During the UN Security Council discussion of transitional justice in September 2003, most speeches followed national interests rather than philosophical lines. The German Foreign Minister emphasized the importance of the International Criminal Court as "an important step towards global civilization."¹¹ Spain's Foreign Minister stressed the importance of shared values,¹² and the French Foreign Minister emphasized the particular circumstances in which the rule of law is exercised: "A model is learned, not imposed."¹³ The Syrian Foreign Minister used the occasion to ask how one can attain justice when Israel occupies Palestinian territory and refuses to renounce nuclear weapons and the United States and others occupy Iraq.¹⁴ The Chinese Foreign Minister worried that improving lives was essential to preventing a recurrence of internal strife.¹⁵ His Mexican colleague agreed and stressed the need for the process to result in a record of events and in the healing of a society torn asunder.¹⁶ He also saw greater coordination, for example, between the Security Council and General Assembly as contributing to the advancement of justice and the rule of law.¹⁷ The Bulgarian Foreign Minister observed

that in cases of transitional justice, "it is essential to avoid the impression that a foreign order is being imposed."¹⁸

Transitional justice questions begin where they should, with the local inhabitants of a region in need of reconstruction and healing, but do not exhaust the issues that either such a community or all the interested parties should address. For example, the subject of transitional justice has generated an industry of diplomats, think tanks, nongovernmental organizations, and intergovernmental organizations or parts of them, such as the UN Rule of Law Project.¹⁹ Each interested party has its own interests. These may or may not coincide with the interests of the local population or at least with the way that population balances competing interests. As a result, one has to recognize and accept that transitional justice involves a political, not just a moral process.

The country in question will have to deal with the consequences of the process, possibly for generations. For example, the U.S. invasion of Panama in 1989 was driven by the narrowing of policy options resulting from the indictment of Manuel Noriega. It is logical to assume that the referral of Libyan leader Muammar Qadhafi to the International Criminal Court (ICC) and the ICC indictment of President Umar al-Bashir of Sudan did nothing to encourage them to give up politics or the policies that had led, respectively, to their referral and indictment. Carla del Ponte, one-time Chief Prosecutor of the International Criminal Court for the Former Yugoslavia, recommended in February 2013 that the UN Security Council refer Syria to the ICC.²⁰ Syria is not a party to the Rome Statute of the ICC. Given the UN Security Council's inability to overcome Russian and Chinese opposition to collective action, it is unlikely the Council will agree on a referral of Syria to the ICC unless Russia and China change their policies.²¹

The debates on transitional justice at the United Nations and the issues raised by efforts nationally and internationally to implement programs of transitional justice highlight the inescapable political impact of those efforts and the importance of the questions that transitional justice mechanisms are supposed to answer. The political dimension has always been clear: who on the losing side of a civil

war would face criminal charges because of their conduct and be barred from participating in the future political life of the country? To what extent does society need outside assistance to attain its aspirations, and what conditions, if any, do the providers of outside assistance impose?

Mechanisms

The starting point in choosing the appropriate transitional justice mechanism is what the new governing elite wants to achieve. A number of Syrian scholars and leaders attempted to answer this question with an innovative plan called *The Day After Project* in 2012 that was sponsored by the United States Institute of Peace and the German Foreign Ministry. The 45 participants represented a cross-section of Syrian politics and society inside and outside the country, and all of them were opposed to the continued rule of President Asad. They shared a vision for a nonsectarian, democratic, and rule-of-law-based Syria. One participant noted, “[T]here is no single one-size-fits-all approach to transitional justice. Multiple mechanisms and varied approaches are appropriate, and the process should be adapted to the Syrian context.”²² Most importantly for the participants was their view that Syria should itself control the question of what kind of transitional justice to have and how to administer it. *The Day After Project* authors believe that Syria’s transition to democracy and social healing will be more likely to succeed if transitional justice mechanisms and institutions are already in place. Coming from people who see themselves as being at the center of Syria’s conflict, this call for transitional justice represents a best practice: local people should establish their priorities with respect to justice; outsiders can assist but should not dictate outcomes.

The Project offers a way to think about the issues confronting Syria in a comprehensive framework. At the same time, it begs the question of standing: does the Project represent the views of expatriate Syrians alone, or does it have resonance in Syria itself among those who are conducting operations against the government? The authors clearly are an asset to be tapped by whatever Syrian national coalition is formed. They can provide the infrastructure for implementing project goals and provide training

in human rights, international humanitarian law, and civilian control of the military to those fighting against the Asad regime. Can the Project gain the support of the population? If Syrians who have borne the brunt of the battle with Asad do not perceive the implementing body as representative of the people, including minorities, those who wrote and/or support the Project will face obstacles, perhaps insurmountable ones, to making their proposals a roadmap.

Indeed, rebels who fight the regime may not be at all receptive to ideas that originate outside Syria or outside their control, however meritorious or popular with foreign sponsors they may be. Radical Sunni Islamists (Salafis) such as the Jabhat al-Nusra have gained in political strength over the past 2 years among Sunni sectarian opponents of President Asad while Shia militants, including Iraqis loyal to Muqtada al-Sadr, support the Asad regime. Again, this raises a question about whether the vision shared by the Project’s authors of a secular, representative government under the rule of law, but not entirely shariah (religious) law, can become the framework for a new Syria. Whether or not the Project succeeds in this regard, it sets forth proposals and a vision that deserve attention.

The Day After Project recommends immediate establishment of a Preparatory Committee on Transitional Justice that would oversee all aspects of the transitional justice program: development and implementation of a strategy, records collection and safeguarding, outreach and publicity so as to minimize revenge attacks and other forms of vigilantism, coordination among transitional justice institutions, preparation of personnel, coordination with outside bodies, and establishment of an ad hoc Special Criminal Court to hear charges against Asad and his family. Lower rank officials would be tried in the Syrian judicial system or “accepted para-judicial processes.”²³ A Commission of Inquiry would “engage in a broad and inclusive process of trust-seeking, establishing a shared account of recent Syrian history.”²⁴

One important issue would be resources for reparation to victims. Monetary reparation, important in tribal law to personal conflict resolution, might be difficult to

provide because of the extensive nature of official abuse going back decades. Alternatives, including guarantees of non-recurrence, might have to suffice.²⁵ Moreover, *The Day After Project* insists on a Syrian process, controlled by Syria, even in areas where international involvement might prove necessary and the implementation of international standards may be required. This insistence may reflect concern about limitation on sentences. A number of Cambodians are reported to have lost interest in the UN-Cambodia hybrid court trials of the principal perpetrators of the Killing Fields because the death penalty is not available to the Court.

The Day After Project approach is comprehensive and complex. It seems to envisage a transitional justice system that incorporates almost all of the mechanisms hitherto tried:

- ◆ Truth commissions, which examine and try to come to terms with past abuses and seek redress for victims. They typically involve the grant of at least conditional immunity.
- ◆ International courts, which attempt to deliver justice when local courts are unable to. Among their features is limited sentencing capacity.
- ◆ Hybrid courts, where a mixed international-national court hears a few cases of extreme gravity that are beyond the national courts' unaided capability to judge. Cambodia and Sierra Leone stand out as examples.
- ◆ Amnesties, which some societies use to turn a historical page and focus on the future. In Chile and Spain, for example, after a substantial period of time, challenges have arisen to continuing that amnesty indefinitely.
- ◆ Doing nothing, which a country sometimes prefers and which requires no institutional accounting for the past. Russia is an outstanding example today. Other historical examples exist.

Each transitional justice mechanism has associated costs and benefits. Some may be helpful to some societies some of the time, but none is a magical solution to

all national problems. Once again, the question to be addressed is purpose. What is the goal of transitional justice, in this case, in Syria? The Syrians need to frame it, but that alone will require a complex process of consensus-building. Accountability, social peace and healing, the rule of law, and other aspirations and values will need to be taken into account and applied, including by those placing tribal law and retributive justice (an-eye-for-an-eye or blood revenge) before the requirements of transitional justice. Alone, none is easy. Together, they can involve cross currents that will require painful choices. For one thing, traditional justice mechanisms and sentences are likely to raise issues for the international community, especially those called on to contribute to reconstruction.

Policy Issues

Given the viciousness of the civil war, the depth of sectarian feeling, and the number of outside actors engaged, it will be no small thing for Syrians to come together to create a new version of their ancient country. The international community has hesitated to intervene as a community or individually. Once the guns are stilled, it may find its voice. One may expect, for example, calls for the new government to abide by principles embodied in the idea of the Responsibility to Protect: sovereignty and government that involve responsibility to the citizenry, at least with respect to protecting it from genocide, mass atrocities, and the worst of war crimes—crimes against humanity.²⁶ Issues of transitional justice now figure among the policy requirements of governance.

A foreseeable issue will be how to define a class of persons whose conduct puts them outside any future Syrian political system. Will they be limited to the losing sides in the civil war? How will their offenses be addressed? *The Day After Project* envisages a special court to try President Asad and his family members for crimes. The Project does not contemplate ending prosecutions with the Asads. How far should a criminal justice process reach? We know that criminal behavior may not be limited to one class or tribe. In the case of Rwanda, the ad hoc International Criminal Court tried only Hutus even though evidence suggests that

Tutsis also engaged in murder.²⁷ Is that the model *The Day After Project* envisages? And what of other contestants for power in Syria? Are additional groups planning for a future defined by the rule of law or some alternative?

Uncertainty and almost unlimited complexity abound so long as the civil war continues. For these reasons, the leading candidate to replace Bashar al-Assad needs to begin preparing the way with representatives of rebel groups who agree with rule of law principles to lay the groundwork for the future, both in terms of the governmental institutions they want and the transitional justice laws on which they can agree. To govern is to choose, Pierre Mendes-France is credited with saying in the 1950s. The Syrians of today need to study their options and choices; the course they pick will narrow their options in the future. For example, once they decide how to treat Asad and his associates, those decisions will become binding even in changed political circumstances. Those they decide to investigate and prosecute for, let us hypothesize, mass killings cannot then become part of the political solutions to problems the new Syria may face. The more serious the offense charged, the harder it is to step back from the consequences of the judicial process. The United States, for example, found that when it indicted General Noriega for drug-trafficking in 1988, it could not then conclude a political arrangement that would include quashing the indictment.

When one considers transitional justice and taking steps in the short term to address demands, one should recall that it is extremely difficult to limit the time in which past wrongs are considered current issues. Cambodia's experience in trying to bring perpetrators of the Killing Fields to justice is one example. Nazi criminals will be hunted as long as they live. Today, Bangladeshis want justice for mass killers from the war of independence in 1971.²⁸ The UN High Commissioner for Human Rights regularly calls on states and others to take steps against perpetrators of crimes long ago.²⁹ The transitional justice solution of today may not suffice tomorrow.

It is far easier to call for an "end to impunity" than it is to deliver justice in a way that contributes to the creation of a society and culture in which the rule of law is deeply root-

ed. The United States, which prides itself on the rule of law, still witnesses political struggles between "contending conceptions of justice"—between the doctrines of natural right and popular sovereignty, or between those who believe in moral law and those who believe power is all.³⁰ The American example is worth pondering because so many themes of the calls for transitional justice surface in U.S. history. And American history shows that the process of seeking justice is ongoing and that conceptions of the past and what is due to it change over time. This latter point is of central importance to those who would help a society move from conflict to peace, stability, and the rule of law. The needs of the moment may not be enduring truths to which the society will look in the future. *The Day After Project* authors appear to understand this point in the very complexity of their outline for how to proceed to govern and to deliver justice. Some of their foes will have no place in the new Syria. Some without the cleanest of hands will be called on to make a country that delivers the rule of law. Would that end the climate of impunity Kofi Annan asserted was essential to public and international confidence?

"Transitional justice" means just that—provision of justice in the transition to a government that administers justice in the ordinary course of governing. Governments make choices even when administering justice, such as how to allocate scarce prosecutorial, judicial, police, and prison resources among ongoing issues of public safety, corruption, and other issues that taint and create obstacles to the rule of law. The goal is to make the rule of law ordinary. For Syria, like so many states, the rule of law will be an extraordinary achievement and reality for many years to come if it is achieved at all. The longer the bloodletting continues, the harder the task of real nation-building will be, and the more likely it is that transitional justice will take a familiar Middle Eastern form: an eye for an eye, with interest compounded.

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Notes

¹ Report of the Secretary-General, August 23, 2004, United Nations (UN) Doc. S/2004/616, 3. See also the Web site of the International Center for Transitional Justice for much useful material, available at <www.ictj.org>.

² See, for example, Martha Minow, *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence* (Boston: Beacon Press, 1998); Jon Elster, *Closing the Books: Transitional Justice in Historical Perspective* (Cambridge: Cambridge University Press, 2004); and Richard S. Williamson, *Human Rights, Democracy and Restorative Justice* (Chicago: Prairie Institute for Economic Growth & Development, 2004). Interestingly, none of these authors devotes attention to the aftermath of the American Civil War and slavery as historical examples of the phenomenon they examine.

³ Montesquieu, *De l'Esprit des Lois* 1, trans. Thomas Nugent (New York: D. Appleton Company, 1900).

⁴ For example, African Union Panel of the Wise, *Peace, Justice, and Reconciliation in Africa: Opportunities and Challenges in the Fight Against Impunity*, The African Union Series (New York: International Peace Institute, February 2013), 10–13.

⁵ The UN Security Council presidency changes every month according to alphabetical order in English. The British, exercising their authority as President, decided to hold a discussion of these issues.

⁶ UN Doc. S/PV.4833, "Justice and the Rule of Law: The United Nations Role," September 24, 2001; continued S/PV.4835, September 30, 2003.

⁷ Ibid., 2–3.

⁸ UN Doc. S/2004/616, *Report of the Secretary-General, The rule of Law and Transitional Justice in Conflict and Post-Conflict Societies at 1*, August 23, 2004. Emphasis added.

⁹ For example, Iraq. See Nicholas Rostow, "Gaza, Iraq, Lebanon: Three Occupations Under International Law," *Israel Yearbook on Human Rights* 37 (2007), 225 and note 83.

¹⁰ See, for example, Antonio Cassese, "Reflections on the Current Prospects for International Criminal Justice," in *Looking to the Future: Essays on International Law in Honor of W. Michael Reisman*, ed. Mahnoush H. Arsanjani et al. (Boston: Martinus Nijhoff Publishers, 2011); Lung-chu Chen, "Human Rights and World Public Order: Major Trends of Development, 1980–2010 and Beyond," in *Looking to the Future*; Jon Elster, *Closing the Books: Transitional Justice in Historical Perspective* (New York: Cambridge University Press, 2004); Governance and Social Development Resource Center, Topic Guide, Justice/Transitional Justice, available at <www.gsdrc.org/go/topic-guides/justice/transitional-justice>; Minow; Williamson.

¹¹ UN Doc. S/PV.4833, 16.

¹² Ibid., 14.

¹³ Ibid., 7.

¹⁴ Ibid., 10–11.

¹⁵ Ibid., 8.

¹⁶ Ibid., 9–12.

¹⁷ Ibid., 9.

¹⁸ Ibid., 12.

¹⁹ UN, "United Nations Rule of Law: Transitional Justice," last modified 2013, available at <www.unrol.org/article.aspx?article_id=29>; International Center for Transitional Justice, available at <<http://ictj.org/>>; The International Journal of Transitional Justice, last modified 2013, available at <www.oxfordjournals.org/our_journals/ijtj/about.html>. These represent a small fraction of the organizations involved in the subject of transitional justice.

²⁰ Nick Cumming-Bruce, "U.N. Rights Officials Urge Syria War Crimes Charges," *The New York Times*, February 18, 2013, A10.

²¹ Of course, the referral presumably would have to designate alleged crimes to be investigated. It is not unreasonable to assume that rebels and government forces could be guilty of crimes that might fall within the ICC's jurisdiction.

²² The authors of *The Day After Project* describe it as the work of "a diverse group of Syrians who are active in the revolution to bring down the regime of Bashar al-Assad and who seek to help Syria transition from dictatorship to democracy." See *The Day After Project: Supporting a Democratic Transition in Syria* (Washington, DC: United States Institute of Peace, 2012), 38.

²³ Ibid., 37, n4.

²⁴ Ibid.

²⁵ Ibid., 56.

²⁶ UN Doc. A/RES/60/1, 2005 World Summit Outcome, paras. 138–139, 30, October 24, 2005.

²⁷ Alison des Forges, *Leave None to Tell the Story: Genocide in Rwanda* (New York: Human Rights Watch, 1999), 692ff.

²⁸ Jim Yardley, "Vast Throng in Bangladesh Protests Killing of Activist," *The New York Times*, February 17, 2013, 12.

²⁹ For example, in regard to Sri Lanka, Reuters, "Sri Lanka: United Nations Says Leaders Must Do More to Investigate War Deaths," *The New York Times*, February 13, 2013.

³⁰ Steven B. Smith, "Lincoln's Tragic Pragmatism," *The New York Times Book Review*, February 17, 2013, 14 (review of John Burt, *Lincoln's Tragic Pragmatism: Lincoln, Douglas, and Moral Conflict*).

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